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MERCHANT & GOULD SCIENTIFIC ATLANTA, A CISCO COMPANY P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			SALCE, JASON P	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DEAN F. JERDING, ROBERT O. BANKER,
ARTURO A. RODRIGUEZ, GREGORY S. DURDEN,
ROBERT T. VAN ORDER, JACK MILLER,
and KEVIN HILL

Appeal 2009-015386
Application 09/518,041
Technology Center 2400

Before DENISE M. POTIER, JEFFERY S. SMITH, and BRUCE R. WINSOR, *Administrative Patent Judges*.

POTIER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 121-144. Claims 1-120 have been canceled. App. Br. 1. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Appellants' invention relates to a set top terminal having an

interactive program guide that provides applications for enabling viewers to easily and efficiently browse information about available programming services. *See generally* Spec. 4.

Claim 121 is reproduced below with the key disputed limitations emphasized:

121. A set-top terminal (STT) comprising:

memory configured to store an interactive program guide (IPG), the IPG configured to display, on a display screen, program information related to a plurality of television programs, the program information for each television program including at least a title of the television program, a start time of the television program, and a channel on which the television program can be viewed; and

a processor in communication with the memory, the processor configured to control the IPG to display the program information;

wherein the processor is further configured to receive an arrangement instruction from a viewer to display the program information in one of at least two views including at least a first view and a second view,

wherein the first view includes television program titles arranged in columns corresponding to sequential broadcast times and in rows corresponding to sequential channels, and

wherein the second view includes television program titles arranged in rows corresponding to sequential broadcast times; and

wherein the processor is further configured to, responsive to receiving an activation instruction from a viewer, change the display screen from a program view predominantly showing a television program to an IPG view predominantly showing program information in a view corresponding to the received arrangement instruction; and

wherein the processor is further configured, *responsive to receiving a focus instruction subsequent to the activation instruction*, to center the sequential channels on the channel corresponding to a current program to which the STT is tuned, and to highlight the one of the television program channels corresponding to the current program.

The Examiner relies on the following as evidence of unpatentability:

Rowe	US 5,812,123	Sept. 22, 1998
LaJoie	US 5,850,218	Dec. 15, 1998

THE REJECTIONS

1. The Examiner newly rejected claims 137-144 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Ans. 3-4.
2. The Examiner rejected claims 121-144 under 35 U.S.C. § 103(a) as unpatentable over LaJoie and Rowe. Ans. 4-8.¹

THE NON-STATUTORY SUBJECT MATTER REJECTION

The Examiner presents a new ground of rejection for claims 137-144 as being directed to patent ineligible subject matter. Ans. 3-4. The Examiner finds that representative claim 137 recites a computer-readable medium that includes a propagation medium² and paper,³ which do not fall under a statutory category set forth under § 101. *Id.* In the Reply Brief, Appellants acknowledge the new rejection but fail to dispute the Examiner's position related to the § 101 rejection. *See* Reply Br. 2-4. We therefore

¹ Throughout this opinion, we refer to (1) the Appeal Brief filed December 8, 2008; (2) the Examiner's Answer mailed April 28, 2009; and (3) the Reply Brief filed May 18, 2009.

² Notably, signals are considered non-statutory under § 101. *See In re Nuijten*, 500 F.3d 1346, 1357 (Fed. Cir. 2007); *see also* David J. Kappos, *Subject Matter Eligibility of Computer Readable Media*, 1351 Off. Gaz. Pat. Office 212 (Feb. 23, 2010).

³ Paper containing logic or a program is printed matter and is considered non-statutory under § 101. *See In re Miller*, 418 F.2d 1392, 1396 (CCPA 1969); *see also* *Ex parte Shealy*, 2007 WL 5211669, No. 2006-1601, at *21-22 (BPAI April 23, 2007) (informative) and Manual of Patent Examining Procedure (MPEP) § 706.03(a)(I)(A), 8th ed., Rev. 6, Sept. 2007

summarily sustain the rejection of claims 137-144. *See, e.g.*, MPEP § 1205.02, 8th ed., Rev. 8, July 2010 (“If a ground of rejection stated by the examiner is not addressed in the appellant's brief, that ground of rejection will be summarily sustained by the Board.”).

THE OBVIOUSNESS REJECTION OVER LAJOIE AND ROWE

Regarding representative independent claim 121, the Examiner finds that LaJoie teaches all the limitations in the claim, including mapping LaJoie's request to change to a different viewing mode to the recited processor configured to center and highlight the channels in response to receiving a focus instruction. Ans. 5-6, 10. The Examiner relies on Rowe to teach the processor is configured to change the display screen from a program to an IPG view in response to an activation instruction. Ans. 6.

Appellants argue that LaJoie does not teach the highlighting and centering behavior is in response to a focus instruction but instead is in response to a user requesting to change IPG modes. App. Br. 7. Appellants assert that this highlighting and centering behavior is a side effect of the request and is not in response to any instruction. *See id.* Appellants also assert that neither cited reference teaches a focus instruction separate and distinct from an activation instruction. Reply Br. 3.

ISSUE

Under § 103, has the Examiner erred in rejecting claim 121 by finding that LaJoie and Rowe collectively would have taught or suggested a processor configured to center the sequential channels on the current program channel to which the STT is tuned and to highlight the current

program channel, in response to receiving a focus instruction after an activation instruction?

FINDINGS OF FACT

LaJoie

1. LaJoie teaches a STT 6 having a Central Processing Unit (CPU) 30 that control the operations of the STT, including the application software of the STT illustrated by Figures 4 through 35. Col. 13, ll. 22-32; col. 15, ll. 10-12; Figs. 3-35.

2. LaJoie teaches a screen display of the time mode of an IPG 338 of a STT 6. The guide 338 includes a program viewing window 340, a current time and channel indicator 342, a highlighted channel banner 344,⁴ a highlighted program summary 346, a guide data and time bar 348, a channel list 350, and a program grid 366. Col. 8, ll. 65-67; col. 23, ll. 44-51; Fig. 16.

3. Prior to entering the program guide, pressing LaJoie's guide key 398 causes the STT 6 to enter the time mode of IPG 400 from the programming being viewed (e.g., television display 396). Col. 23, ll. 56-59; col. 25, ll. 61-66; Figs. 16, 18.

4. A viewer in LaJoie can switch between different modes of the IPG. For example, a user can switch from an IPG time mode to (a) a theme mode display 416 by pressing the "B" application definable key 252 or (b) a title mode display 418 by pressing the "C" application definable key 252. Col. 26, ll. 27-47; Fig. 19.

⁴ LaJoie refers to the highlighted banner bar as 344 but does not discuss reference character 349 shown in Figure 16. See LaJoie, col. 23, ll. 48, 63; Fig. 16. We presume the reference character "349" in Figure 16 is a typographical error and should have been labeled "344."

5. LaJoie teaches that the default theme and program highlighted when the user enters theme mode display 420 may correspond to the program being viewed (e.g., “CBS Sports Special.”) The program may also be centered in the list. Col. 26, l. 64–col. 27, l. 7; Fig. 20.

ANALYSIS

Based on the record before us, we find no error in the Examiner’s obviousness rejection of representative claim 121 which calls for, in pertinent part, a processor configured to center the sequential channels on the current program channel to which the STT is tuned and to highlight the current program channel, in response to receiving a focus instruction after an activation instruction. As the Examiner explains (Ans. 5-6), LaJoie teaches a STT having a processor (e.g., CPU 30) used to control the IPG and to display program information. *See* FF 1. For example, LaJoie teaches entering a time mode of an IPG (e.g., 400) from a normal television display (e.g., 396) by pressing a guide key. FF 3. Thus, as the Examiner explains (see Ans. 9), LaJoie teaches a processor configured to change or capable of changing the display screen from a program view to an IPG view in response to an activation instruction (e.g., request to enter the time mode of an IPG 400 includes an activation instruction) from a viewer as recited.

Notably, the request to enter an IPG time display mode by pressing a guide key involves multiple instructions to the processor to generate the time view displayed. That is, a time mode view request is not a single instruction but includes many instructions to the processor so that all the time view mode information (e.g., program viewing window 340, a current time and channel indicator 342, a highlighted channel banner 344, a highlighted

program summary 346, a guide data and time bar 348, a channel list 350, and a program grid 366) shown in Figure 16 is displayed. *See FF 2.* LaJoie also suggests the current program being viewed is highlighted and centered by default, when requesting to a particular view mode. *See FF 3, 5.* Thus, after the viewer initially activates a viewing mode by requesting the IPG time mode (e.g., an activation instruction), additional instruction (e.g., a focus instruction) are sent to the processor so that the IPG includes the current program highlighted and centered in the program grid along with all the other information. *See id.*

Nonetheless, as the Examiner also discusses (Ans. 5-6, 9-10), LaJoie teaches switching IPG modes (e.g., from time to theme mode) or responding to another instruction (e.g., a focus instruction) subsequent to the original activation instruction that transitions the display from the viewing program to the IPG. *See FF 3-4.* LaJoie teaches such an instruction can also default the IPG display to a view where the current program is highlighted and centered within the guide and thus includes the recite processor configured to center the sequential channels on the current program channel to which the STT is tuned and to highlight the current program channel, in response to receiving a focus instruction after an activation instruction. *See FF 5.* We therefore are not persuaded by Appellants' arguments that LaJoie does not teach distinct activation and focus instructions and that these requests are mere side effects of requesting an IPG view.

Regarding independent claims 129 and 137, Appellants repeat the arguments made for claim 121. *Compare App. Br. 8-10 with App. Br. 6-8.* We therefore find that the issues for these claims are the same as those in connection with claim 121 and refer to our previous discussion.

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For the foregoing reasons, Appellants have not persuaded us of error in the obviousness rejection of independent claim 121 and claims 122-144 not distinctly and separately argued with particularity (*see* App. Br. 6-10).

CONCLUSION

The Examiner did not err in rejecting claims 137-144 under § 101 and claims 121-144 under § 103.

DECISION

The Examiner's decision rejecting claims 121-144 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ELD